

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE FARM MUTUAL	)
AUTOMOBILE INSURANCE	) No. 474, 2010
COMPANY, a foreign corporation,	)
	) Court Below: Superior Court
Defendant Below,	) of the State of Delaware in
Appellant,	) and for Kent County
	)
v.	) C.A. No. 08C-07-026
	)
JOANNE ENRIQUE,	)
	)
Plaintiff Below,	)
Appellee.	)

Submitted: March 2, 2011

Decided: March 22, 2011

Before **STEELE**, Chief Justice, **HOLLAND, BERGER, JACOBS** and **RIDGELY**, Justices.

***ORDER***

This 22<sup>nd</sup> day of March 2011, it appears to the Court that:

(1) State Farm Mutual Automobile Insurance Company appeals from a Superior Court order awarding Joanne Enrique costs and prejudgment interest under 6 *Del. C.* § 2301(d) on her uninsured motorist benefits claims. State Farm insured Enrique under a typical auto policy in which she had \$100,000 uninsured motorist coverage. State Farm disputed Enrique's claim for damages under the UM coverage. Enrique sued. A jury awarded Enrique \$260,000 for damages arising out of the automobile accident with the uninsured motorist. On appeal,

State Farm claims that the trial judge erred by awarding Enrique prejudgment interest because the underlying judgment with prejudgment interest exceeded the uninsured motorist policy coverage limit. Because prejudgment interest is a litigation cost and not an element of damages, the uninsured motorist policy's coverage limits do not cap the award. Therefore, we AFFIRM.

(2) This action arises out of a claim for uninsured motorist benefits under a policy State Farm issued to Jason Garber. On September 26, 2005, Enrique permissively drove Garber's car. Bridgett Roy struck the Garber car. The parties do not dispute that Roy's negligence proximately caused the accident, that Enrique sustained injuries in the accident, and that Enrique qualified for uninsured motorist coverage under Garber's policy.

(3) On July 22, 2008, Enrique filed a complaint against State Farm for damages under Garber's uninsured motorist coverage. The policy provided for \$100,000 in single limits uninsured motorist coverage. State Farm advanced \$25,000 to Enrique after negotiations between the parties broke down. On January 22, 2010, Enrique sent State Farm a demand pursuant to 6 *Del. C.* § 2301(d)<sup>1</sup>

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<sup>1</sup> 6 *Del. C.* § 2301(d) is also commonly known as the "rejected settlement offer" statute. It reads: In any tort action for compensatory damages in the Superior Court or the Court of Common Pleas seeking monetary relief for bodily injuries, death or property damage, interest shall be added to any final judgment entered for damages awarded, calculated at the rate established in subsection (a) of this section, commencing from the date of injury, provided that prior to trial the plaintiff had extended to defendant a written settlement demand valid for a minimum of 30 days

requesting payment of an additional \$65,000 for a total of \$90,000. On February 2, 2010, State Farm rejected the demand. Before trial, the parties stipulated that \$75,000 remained under the UM coverage.

(4) After a three day trial, a jury returned a verdict for \$260,000 in Enrique's favor. Following trial, Enrique filed a motion to assess expert witness fees, court costs, and prejudgment interest. The Superior Court judge awarded an undisputed \$1,369 for court costs, \$2,000 for expert fees, and prejudgment interest. The Superior Court judge held that an award of prejudgment interest added to damages could exceed the UM policy limits but that the remaining coverage balance of \$75,000 would be the basis for calculating prejudgment interest, not the jury verdict of \$260,000. The Superior Court judge awarded prejudgment interest of \$32,296.87 based on the remaining \$75,000 of the \$100,000 coverage limit.<sup>2</sup>

(5) On appeal, State Farm contends that the trial judge's total award (damages plus prejudgment interest) erroneously exceeded the \$75,000 remaining under the UM coverage limit. According to State Farm, prejudgment interest is an element of damages. Because the policy limits the maximum recoverable under UM to the bodily injury damage limits in the policy (\$100,000), and prejudgment

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in an amount less than the amount of damages upon which the judgment was entered.

<sup>2</sup> *Enrique v. State Farm Mut. Auto. Ins.*, 2010 WL 263845, at \*3 (Del. Super. Ct. June 30, 2010).

interest is an element of damages, the policy limit of \$100,000 caps Enrique’s recovery—prejudgment interest included.<sup>3</sup>

(6) We review questions of statutory interpretation *de novo* because they involve questions of law.<sup>4</sup> When reviewing a statute or policy *de novo*, we must determine whether the trial judge “erred in formulating or applying legal precepts.”<sup>5</sup>

(7) Section 2301(d) sets forth certain requirements that a claimant must meet in order to qualify for prejudgment interest.<sup>6</sup> The action must be a tort action, the claimant must have made and held open a demand for settlement for 30 days, and the damages determined at trial must exceed the amount plaintiff agreed to accept for settlement.<sup>7</sup> If these elements are met, then “[a] trial judge would ultimately calculate the contested prejudgment interest based upon the extent of damages—not the existence of or terms of coverage.”<sup>8</sup> However, when prejudgment interest is awarded based on uninsured motorist coverage, then we

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<sup>3</sup> App. to Op. Br. at A0032.

<sup>4</sup> *Rapposelli v. State Farm Mut. Ins.*, 988 A.2d 425, 427 (Del. 2010).

<sup>5</sup> *State Farm Mut. Ins. Co. v. Clarendon Nat’l Ins. Co.*, 604 A.2d 384, 387 (Del. 1992).

<sup>6</sup> 6 Del. C. § 2301(d).

<sup>7</sup> *See id.*

<sup>8</sup> *Rapposelli*, 988 A.2d at 427-29.

agree with the trial judge that the award of prejudgment interest can be greater than the uninsured motorist policy limits but that the award must be based on the remaining coverage—not the actual jury damage award.

(8) Here, Enrique met all the requirements under section 2301(d). Further, it is undisputed that Enrique offered to settle the case before trial for an additional payment of \$65,000.00, State Farm rejected that demand, it remained open for 30 days, and the jury returned a damages verdict for \$260,000.00—clearly in excess of the demand. Because all of the requirements under the plain and unambiguous statute are met, the trial judge must award prejudgment interest.

(9) In Delaware, prejudgment interest only becomes an obligation of a litigating party—here the uninsured motorist carrier—when that party rejects a demand before trial for an amount less than what the jury awards as damages. Just as State Farm must pay ordinary court costs and fees which are beyond the limits of liability, it also must pay prejudgment interest costs. The contracted policy limit forms the basis for the prejudgment interest award but does not set the cap for recovery on litigation costs and fees, which may include expert witness fees, witness fees, and court reporter fees.<sup>9</sup> Indeed, we agree with the rationale of the

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<sup>9</sup> See Super. Ct. R. 54

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(d) Costs. Except when express provision therefore is made either in a statute or in these Rules or in the Rules of the Supreme Court, costs shall be allowed as of course to the

trial judge that prejudgment interest is an expense associated with the defense costs and strategy in the case.<sup>10</sup> As a litigation cost, prejudgment interest does not constitute an element of damages controlled by the uninsured motorist policy's coverage limits.

(10) The General Assembly enacted 6 *Del. C.* § 2301(d) to promote earlier settlement of claims by encouraging parties to make fair offers sooner, with the effect of reducing court congestion.<sup>11</sup> A contradictory holding capping State Farm's liability on prejudgment interest to the policy limit would strip section 2301 of its purpose—encouraging settlement—when the insurer is faced with a

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prevailing party upon application to the Court within ten (10) days of the entry of final judgment unless the Court otherwise directs.

(f) Court reporter fees. The fees paid court reporters for the Court's copy of transcripts of depositions shall not be taxable costs unless introduced into evidence. Fees for other copies of such transcripts shall not be taxable costs. The production and playback costs associated with any videotape deposition may also be taxable as costs if the video deposition is introduced into evidence.

(g) Witness fees. Witness fees for those testifying on deposition shall be the same as statutory witness fees for testifying in Court and such fees shall be taxable as costs if the deposition is introduced into evidence.

(h) Expert witness fees. Fees for expert witnesses testifying on deposition shall be taxed as costs pursuant to 10 *Del.C.* § 8906 only where the deposition is introduced into evidence.

<sup>10</sup> *Enrique*, 2010 WL 263845, at \*2; see *Cox v. Peerless Ins. Co.*, 774 F.Supp. 83, 86 (D. Conn. 1991) (“[P]rejudgment interest . . . provides an additional incentive to settle a lawsuit and avoid a trial in certain cases by imposing an increased penalty upon a nonsettling litigant.”)(internal quotation marks omitted).

<sup>11</sup> *Rapposelli*, 988 A.2d at 427; see Del. S.B. 310, 140th Gen. Assemb. (2000).

demand below or at what ultimately may be determined to be at or in excess of the policy limit. Contractual terms in an uninsured motorist policy must be interpreted consistently with statutory public policy. The trial judge correctly did so here.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice